

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

RICHARD CHRISTENSON,

Plaintiff,

vs.

MARIAH EASTMAN,

Defendant.

CV-18-00034-H-BMM-JTJ

ORDER

Plaintiff Richard Christenson is a prisoner proceeding in forma pauperis. The Court must review his Complaint under 28 U.S.C. § 1915 and § 1915A. United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on March 5, 2018. (Doc. 4.) Judge Johnston recommends that the Complaint be dismissed as it fails to state a federal claim for relief.

Judge Johnston entered Findings and Recommendations in this matter on October 4, 2017. (Doc. 8.) .) Neither party filed objections. When a party makes no objections, the Court need not review *de novo* the proposed Findings and Recommendations. *Thomas v. Arn*, 474 U.S. 140, 149-52 (1986). This Court will review Judge Johnston's Findings and Recommendations, however, for clear error.

McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981).

Judge Johnston determined that § 1915A(b) and § 1915(e)(2)(B) require the Court to dismiss a complaint if the complaint fails to state a claim upon which relief may be granted. (Doc. 4 at 3.) The Court will find the complaint to be frivolous if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A complaint fails to state a claim upon which relief may be granted if the plaintiff fails to allege the grounds of his “entitlement to relief.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Christenson proceeds pro se litigant. A document filed by a pro se litigant must be liberally construed and a pro se litigant must be held to less stringent standards. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

Christenson alleges claims against his public defender, Mariah Eastman. (Doc. 4 at 3.) Christenson alleges that Eastman failed to obtain his out of state mental health records during his pending criminal case. *Id.* at 4. Christenson further alleges that Eastman failed to send him the state’s discovery showing what exculpatory evidence the state proposed to use. *Id.* As a result, Christenson claims that his Fifth, Sixth, Eighth, and Fourteenth Amendment rights have been violated. (Doc. 2.)

Judge Johnston determined that Christenson cannot state a federal 42 U.S.C. § 1983 claim against Eastman as Eastman was not a state actor. *See Polk Cnty. v. Dodson*, 454 U.S. 312 (1981). Judge Johnston further determined that Christenson's claims are barred by the doctrine set forth in *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994).

Heck requires "in order to recover damages for an allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal," or otherwise declared invalid, called into question by the issuance of a habeas writ, or expunged. *Id.* Judge Johnston determined that Christenson's conviction has not been reversed, declared invalid, expunged, or called into question. (Doc. 4 at 5.) *Heck* bars his claims.

The Court has reviewed Judge Johnston's Findings and Recommendations for clear error. The Court finds no error in Judge Johnston's Findings and Recommendations, and adopts them in full.

IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 4), are ADOPTED IN FULL.

IT IS ORDERED that this matter be DISMISSED.

IT IS ORDERED that the Clerk of Court shall close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Clerk shall have the docket reflect that pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. The record makes clear that the Complaint is frivolous as it lacks arguable substance in law or fact.

DATED this 5th day of April, 2018.



Brian Morris
United States District Court Judge